

## **CHAPTER NO. 444**

### **HOUSE BILL NO. 2274**

**By Representatives McMillan, McDonald, Coleman, Moore, Fowlkes, Russell Johnson, DuBois, Marrero**

**Substituted for: Senate Bill No. 2259**

**By Senator Kyle**

AN ACT to amend Tennessee Code Annotated Title 11, Chapter 7, relative to acquisition and preservation of land.

WHEREAS, from the hills and mountains of East Tennessee to the Cumberland Plateau to the Mississippi River, Tennessee offers an unparalleled array of natural areas; and

WHEREAS, Tennessee's undeveloped open spaces and undeveloped natural areas are important to our citizens' physical and mental health, the preservation of our state's heritage, and the continued growth and expansion of our state's economy; and

WHEREAS, in recent years there has been a significant increase in the rate at which Tennessee's open spaces are being developed. The United States Department of Agriculture reports that Tennessee lost an average of 100,000 acres of forest land and 75,000 acres of farmland to urbanization and development each year between 1999-2003. As our state continues to grow more urbanized, protecting undeveloped open space and our natural heritage will become a greater challenge; and

WHEREAS, protecting undeveloped open space and the natural heritage of our state is critical to building and maintaining a vibrant economy. One of the fundamental engines of economic growth in the coming years will be the preservation of our state's high quality of life and a key component of the preservation of our quality of life lies in preserving our natural heritage; and

WHEREAS, our state's natural beauty draws thousands of visitors every year, making tourism the second largest industry in Tennessee. The tourism industry employs over 177,000 Tennesseans and contributes more than ten and a half billion dollars each year to our economy; and

WHEREAS, the state's forestry and agricultural industries also are invaluable components of Tennessee's economy, and state government must work to partner with these industries and other interested stakeholders to preserve Tennessee's rich natural heritage and valuable undeveloped open spaces; and

WHEREAS, the establishment of the Tennessee Heritage Conservation Trust Fund will enable the state to collaborate and partner with both public and private entities to permanently preserve some of Tennessee's undeveloped open spaces, while at the same time enhancing and strengthening the state's economy; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Heritage Conservation Trust Fund Act of 2005".

SECTION 2. Tennessee Code Annotated, Title 11, Chapter 7 is amended by adding the following as a new part:

Section \_\_\_\_\_. As used in this part, unless the context requires otherwise:

( ) "Board" means the governing body of the Tennessee Heritage Conservation Trust Fund.

( ) "Non-profit organization" means an entity that is exempt from federal income taxation under § 501(a) of the Internal Revenue Code as an organization described in § 501(c)(3) of the Internal Revenue Code.

( ) "Trust fund" means the Tennessee Heritage Conservation Trust Fund.

Section \_\_\_\_\_.

(a) The Tennessee Heritage Conservation Trust Fund is hereby established as a special agency account in the state general fund. The purpose of this trust fund is to assist the state in permanently conserving and preserving tracts of land within the state of Tennessee for the purposes of promoting tourism and recreation, including outdoor activities such as hunting, fishing, equestrian activities and hiking; protecting, conserving

and restoring the state's physical, cultural, archeological, historical and environmental resources; and preserving working landscapes.

(b) Moneys in the trust fund shall be invested by the state treasurer in accordance with applicable general law, except as qualified by this part. The state treasurer shall hold the trust fund separate and apart from all other moneys, funds, and accounts.

(c) Any balance remaining unexpended at the end of a fiscal year in the trust fund shall be carried forward into the subsequent fiscal year.

(d) Investment earnings credited to the assets of the trust fund, including but not limited to interest, shall be carried forward into the subsequent fiscal year.

(e) The trust fund is authorized to request and receive gifts, contributions, bequests, donations, and grants from any legal and appropriate source to effectuate its purpose. Any such funds received shall be deposited into the trust fund, provided that if any such items are not in the form of funds, any income, rents, or proceeds generated from them shall be deposited into the trust fund.

(f) The trust fund is authorized to create or establish a non-profit organization which shall also be eligible to request and receive gifts, contributions, bequests, donations and grants from any legal and appropriate source to effectuate the trust fund's purpose.

(g) Moneys in the trust fund and in any non-profit entity created pursuant to subsection (f) shall be expended only in accordance with, and for the purposes stated in, the provisions of this part. No part of the fund shall be diverted to the general fund or any other public fund for any purpose whatsoever.

Section \_\_\_\_.

(a) There is hereby established the Tennessee Heritage Conservation Trust Fund Board of Trustees. The board shall be attached to the department of environment and conservation for administrative purposes but shall be independent of the department. Expenditures from the trust fund shall be made only upon authorization of the board.

(b) The board shall consist of eleven (11) members.

(1) Trustees shall be appointed by the governor, subject to confirmation by each house of the general assembly, but appointments shall be effective until adversely acted upon by the general assembly.

(2) Persons appointed to the board shall include persons knowledgeable in the areas of land acquisition, management, conservation and protection.

(3) The membership of the board shall appropriately reflect the racial and geographic diversity of this state. At no time shall the membership of the board be composed of more than four (4) members who reside in any one of the grand divisions of the state as defined in Title 4, Chapter 1, Part 2.

(4) The commissioner of environment and conservation, the commissioner of agriculture, and the executive director of the wildlife resources agency, or their designees, shall serve as ex-officio, non-voting members of the board.

(5) The governor shall appoint a board chairperson from the membership of the board. Other officers shall be selected as provided in the bylaws of the fund.

(c) Trustees shall serve four (4) year, renewable terms; provided that of the initial trustees appointed:

(1) Three (3) trustees shall be appointed for an initial term of four (4) years;

(2) Three (3) trustees shall be appointed for an initial term of three (3) years;

(3) Three (3) trustees shall be appointed for an initial term of two (2) years; and

(4) Two (2) trustees shall be appointed for an initial term of one (1) year.

(d) Should a board position become vacant through resignation, removal, or other cause, the governor shall appoint a new member to serve the unexpired term, subject to confirmation of each house of the general assembly as provided in (b). Trustees shall continue to serve on the board after the expiration of their term until a new trustee is appointed.

(e) A quorum of the board shall be seven (7) trustees.

(f) Trustees shall receive no compensation for their service on the board, but may be reimbursed for those expenses allowed by the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(g) The board shall adopt and implement a policy related to conflicts of interest to ensure that all trustees avoid any situation that creates an actual or perceived conflict of interest related to the work of the trust fund.

(h) The board shall submit an annual report to the governor, speaker of the house, speaker of the senate, comptroller of the treasury, chairperson of the senate environment, conservation and tourism committee, chairperson of the house conservation and environment committee, chairperson of the senate government operations committee, and chairperson of the house government operations committee by June 30 of each year. Such report shall include detailed information on the operation and financial status of the trust fund and any non-profit entity created pursuant to section \_\_\_\_ (f).

(i) The trust fund and any non-profit entity created pursuant to section \_\_\_\_ (f) shall be subject to an annual audit by the comptroller of the treasury, and the trust fund or entity shall bear the full costs of this audit.

(j) Operating expenses of the board and its staff shall be paid from the fund.

Section \_\_\_\_\_. In carrying out the purposes of the trust fund, the board is authorized to do the following:

(a) Acquire for the state, by purchase or by donation, and convey, sell, exchange, lease or otherwise transfer any interest in real property; however, the board does not have the power of eminent domain;

(b) Make grants or loans to state, federal or local governments and to non-profit organizations in order to carry out the purposes of this part including, but not limited to, grants or loans provided to acquire a fee simple or other interest in real property;

(c) Enter into contracts and cooperative agreements, other than grants or loans pursuant to subsection (b), with state, federal and local governments, with private individuals and corporations, and with associations and organizations as the trust fund may deem necessary or convenient to enable it to carry out the purposes of this part;

(d) Adopt, amend and repeal bylaws;

(e) Appoint an executive director of the fund and such other staff as is necessary to carry out the provisions of this part;

(f) Adopt policies and guidelines for the use of the trust fund, including the procedure for identifying projects, establishing conservation priorities and allocating money from the trust fund; and

(g) Take any other necessary actions to carry out the provisions of this part.

Section \_\_\_\_\_.

(a) The board shall make grants or loans pursuant to section \_\_\_\_ only after the recipient entity has entered into an agreement with the trust fund, on the terms and conditions specified by the board. After approving a grant or loan, the board may assist the grantee in carrying out the purposes of the grant.

(b) When awarding grants or making loans pursuant to this section, the board may require repayment of those funds on the terms and conditions it deems appropriate. Proceeds from the repayment or reimbursement of amounts granted or loaned by the board shall be deposited in the fund.

(c) Any entity applying for a grant or loan from the trust fund to acquire an interest in real property shall specify the following in the grant or loan application:

- (1) The intended use of the property;
- (2) The intended ultimate owner of the property;
- (3) The entity that will be responsible for managing the property;
- (4) The funding source for the cost of ongoing management; and
- (5) Any other information required by the board.

(d) Any entity applying for a grant or loan from the trust fund to acquire an interest in real property shall provide a copy of the organization's most recent audited annual financial statements. Such statements must have been prepared within two (2) years of the date of the grant application.

(e) In order to receive a grant from the trust fund to assist in the acquisition of any interest in real property, a public agency or nonprofit organization must enter into an agreement with the board. The terms of such agreement shall include the following:

(1) The terms under which the interest in real property is ultimately acquired shall be subject to the board's approval;

(2) The interest in real property acquired under the grant shall not be used as security for a debt unless the board approves the transaction;

(3) The board shall take appropriate action to protect the public interest in the acquisition by ensuring that the land will be permanently conserved. In meeting this obligation, the board shall employ appropriate means, including but not limited to the acquisition of conservation easements or reversionary interests;

(4) Any subsequent transfer of an interest in the real property acquired pursuant to this part shall be subject to approval of the board, and a new agreement sufficient to protect the public interest shall be entered into between the board and the transferee;

(5) A description of the level of use that will be allowed on the property. In awarding grants pursuant to this chapter, the board shall take appropriate action to ensure the preservation of a public benefit that is consistent with the public interest in the acquisition;

(6) A requirement that the public agency or nonprofit organization provide to the state an independent appraisal of the fair market value of the interest in real property to be acquired; and

(7) A requirement that the public agency or nonprofit organization provide to the state a copy of a financial audit of the agency or organization that has been prepared by an independent public accountant for the most recent completed fiscal year. In addition, the agency or organization shall be required to provide the state with such an audit for subsequent fiscal years during the term of the grant agreement.

Section \_\_\_\_\_. Acquisitions and disposals of any interest in real property, other than the acquisition of conservation easements and reversionary interests, acquired for the state by the trust fund or the nonprofit organization created under Section \_\_\_\_ (f) shall be subject to the requirements of § 4-15-102(d) and § 12-2-112. Notwithstanding any other law to the contrary, the acquisition of conservation easements and reversionary interests by the trust fund and the acquisition of any interest in real property by a non-state public agency or a nonprofit organization using grant funds received from the trust fund shall only require that such real property interest be promptly reported to the state building commission and shall not be subject to § 4-15-102(d) or § 12-2-112 or any other approval otherwise required by state law.

Section \_\_\_\_\_. Real property in which the trust fund acquires a fee simple interest for the state shall be exempt from all state and local property taxes.

Section \_\_\_\_\_.

(a) There is hereby created a special agency account in the state general fund to be known as the conservation compensation fund. Expenditures from such fund shall only be made to implement and effectuate the purposes of this part. Funds deposited in such fund shall not revert at the end of any fiscal year and all interest accruing on investments and deposits of the fund shall be returned to and made a part of the fund.

(b) On or before January 1 of each year, the commissioner of finance and administration shall certify to the comptroller of the treasury such information as is necessary to identify the parcels of property which have been rendered tax exempt through acquisition by the state pursuant to this part. The comptroller of the treasury shall determine the appropriate tax rate and assessed value of each such parcel of property, and on or before March 1 of each year, shall certify to the commissioner of finance and administration the amount of property tax revenue lost by each affected city or county the prior calendar year. The assessed value shall be based on the use value provided for in title 67, chapter 5, part 10, if the property is of sufficient size to have been classified under that part. Acquisition by the state pursuant to this part of property classified under title 67, chapter 5, part 10, shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of such acquisition. If the property is not of sufficient size to have been classified under title 67, chapter 5, part 10, the assessed value shall be determined according to the same basis as other like property within the jurisdiction. Each subsequent yearly reimbursement amount shall be based on the same assessed value, tax rate and use in effect on the date of purchase. The commissioner of finance and administration shall reimburse each affected city and county the amount so determined from funds available in the conservation compensation fund. In any year in which funds available in the conservation compensation fund are insufficient to fully reimburse such cities and counties, the commissioner of finance and administration shall effect a transfer of funds from the Tennessee Heritage Conservation Trust Fund to the conservation compensation fund in an amount sufficient to fully reimburse the affected cities and counties. Funds transferred from the Tennessee Heritage Conservation Trust Fund to the conservation compensation fund along with interest, if any, accruing on such funds after their transfer to the conservation compensation fund, shall be expended to reimburse affected cities and counties only for lands acquired by the state under the Tennessee Heritage Trust Fund Act of 2005.

SECTION 3. The Tennessee heritage conservation trust fund board, created by Section 2 of this act, shall terminate on June 30, 2007.

SECTION 4. This Act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 27, 2005**

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 17<sup>th</sup> day of June 2005**

  
PHIL BREDESEN, GOVERNOR